

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
September 12, 2005 Session

**IN RE: ESTATE OF WAYNE DOYLE BENNETT**

**Appeal from the Chancery Court for Knox County**  
**No. 60430-3     Sharon Bell, Chancellor**

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**No. E2004-02007-COA-R3-CV - FILED SEPTEMBER 23, 2005**

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Angela Clabough filed a claim against the estate of Wayne Doyle Bennett, claiming she was his illegitimate daughter. The administratrix of the estate filed an exception to the claim arguing, among other things, that the claim was time barred. After a hearing, the Clerk and Master filed a report recommending to the Chancery Court that the claim be disallowed because it was filed untimely. An exception to the Master's Report was filed and after a hearing before the Chancery Court, the Chancellor agreed with the recommendation of the Clerk and Master and dismissed the claim as being untimely. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the  
Chancery Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Nicholas D. Bunstine, Knoxville, Tennessee, for the Appellant Angela Clabough.

A. Thomas Monceret, Knoxville, Tennessee, for the Appellee Paula Dalton.

## **OPINION**

### **Background**

Wayne Doyle Bennett died intestate on April 11, 2002. Competing Petitions for Granting of Letters of Administration were filed by the decedent's sister, Joan Troutt, and by Paula Dalton ("Dalton"), who claimed to be the decedent's daughter. A hearing was conducted on November 21, 2002, at which time the petitioners announced their agreement that Dalton should be appointed administratrix of the estate. This agreement was reached after DNA testing revealed a "99.34% probability" that Troutt was Dalton's biological aunt. Based on the DNA test results, the Clerk and Master concluded at the hearing that there was clear and convincing evidence establishing Dalton as decedent's biological daughter. The Clerk and Master added, however, that there were "potentially two (2) other claimed daughters of the decedent, Melissa Tapp and Angie Stout Clabough ... who would take in this estate ... if it is properly established that they are the biological daughters of the decedent." The Clerk and Master filed a report recommending to the Chancery Court that Dalton be appointed administratrix of the estate and that Dalton conduct an inventory and accounting as required by law. The Clerk and Master certified that copies of the Master's Report dated November 26, 2002, were being sent to "Melissa Tapp and Angie Stout Clabough for them to determine how they wish to protect their interests, [if] any, in this estate." On January 8, 2003, the Master's Report was confirmed by order of the Chancery Court and the Order of Confirmation likewise contained a certification that copies were being sent to Melissa Tapp and Angie Stout Clabough.

On October 29, 2003, Angela Clabough ("Clabough") filed a Claim Against Estate of Wayne Doyle Bennett, stating she was "the daughter of the deceased, Wayne Doyle Bennett, and has a claim against the Estate for her share of the Estate as Mr. Bennett's daughter." Dalton filed an exception to Clabough's claim, asserting that Clabough had notice of the probate through publication which occurred in February of 2003 and that her claim was time barred. A hearing was conducted to determine if Clabough's claim was filed timely and the Clerk and Master filed a report summarizing his findings of fact and conclusions of law as follows:

The Clerk and Master finds, concludes and reports that the claimant was required to file a claim to establish her relationship as the daughter of the decedent within the time allowed for creditors to file claims against the estate and to establish paternity by clear and convincing proof. Because the claimant did not file her claim within the time allowed for creditors to file claims against the estate, the claimant's claim is untimely filed, is barred and should be disallowed....

The Clerk and Master specifically emphasized that its initial Master's Report and the Chancery Court's order confirming that report both contained certifications that they were being sent to Clabough. In addition, publication was made in the Knoxville Independent newspaper on

February 10 and 17 of 2003. The publication provided, among other things, that all persons having claims against the estate were required to file those claims within four months from the date of the first publication. The Clerk and Master then made the following factual and legal conclusions:

(1) The claimant is the daughter of Ruthie Hansard and she was born on July 23, 1976. (2) At the time of her birth, the claimant's mother was unmarried. (3) The decedent died April 11, 2002. (4) The claimant's paternity as daughter was not established by adjudication before his death. (5) "[A]ctual notice" was not given by the personal representative to the claimant to file a claim in the estate or to establish her paternity by clear and convincing proof. (6) The date which is twelve (12) months after the decedent's death is April 11, 2003. (7) The date which is four (4) months from the date of first publication to creditors is June 10, 2003. (8) The date on which the claimant's claim was filed to claim an interest in the estate under the laws of intestate succession is October 29, 2003.

The Clerk and Master's Report then recommended to the Chancery Court that Clabough's claim be disallowed as untimely filed. After Clabough filed a timely objection to the report, the Chancery Court conducted a hearing in June of 2004. The Chancery Court agreed with the Clerk and Master's recommendation and entered an order holding that Clabough's claim was time barred because it was not filed within twelve months of the decedent's death, and the claim was barred "even though the personal representative of the Estate did not provide legal notice to the Claimant pursuant to T.C.A. § 30-2-306(e)."

Clabough appeals raising three issues. First, she claims the Chancery Court erred when it concluded her claim against the estate was not filed timely. Second, Clabough claims that Dalton is estopped from relying on the statute of limitations defense. Clabough's third issue is her claim that she established by clear and convincing evidence that she was the daughter of the decedent and, therefore, should be awarded an intestate share of the estate.

### **Discussion**

The factual findings of the Trial Court are accorded a presumption of correctness, and we will not overturn those factual findings unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). With respect to legal issues, our review is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

The Special Master's report concluding that Clabough's claim was untimely filed and, therefore, was barred relied in large part on the following portion of this Court's opinion in *Scaife*

*v. Roberson*, No. E2002-02666-COA-R3-CV, 2003 Tenn. App. LEXIS 230 (Tenn. Ct. App. Mar. 21, 2003), *no appl. perm. appeal filed*:

"Our Supreme Court [has] held that 'a child born out of wedlock may inherit from and through his father . . . where paternity is established by clear and convincing proof and . . . where rights of inheritance have not finally vested.'" *Brady v. Smith*, 56 S.W.3d 523, 525 (Tenn. Ct. App. 2001) (quoting *Allen v. Harvey*, 568 S.W.2d 829, 835 (Tenn. 1978)). A portion of the *Allen v. Harvey* rule was codified in Tenn. Code Ann. § 31-2-105, which provides, in pertinent part, that a person born out of wedlock is "a child of the father, if: . . . (B) The paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, ...." Tenn. Code Ann. § 31-2-105 (a)(2)(B) (2002).

Tenn. Code Ann. § 31-2-105, does not, however, "address the second limitation found in *Allen v. Harvey*, that 'rights of inheritance have not finally vested.'" *Bilbrey v. Smithers*, 937 S.W.2d 803, 806 (Tenn. 1996) (quoting *Allen*, 568 S.W.2d at 835). Our Supreme Court addressed this issue in *Bilbrey v. Smithers*, and held:

a child born out of wedlock, whose paternity was not adjudicated prior to the death of the father, can establish the right to inherit by intestate succession by asserting that right against the estate of the deceased owner of the property in which an interest is claimed within the time allowed for creditors to file claims against the estate and by establishing paternity by clear and convincing proof.

*Bilbrey*, 937 S.W.2d at 808.

Under Tenn. Code Ann. § 30-2-306, creditors are allowed four months from the date of the first publication or posting of the Notice to Creditors in which to file claims against the estate. *See* Tenn. Code Ann. § 30-2-306(c) (2002). Tenn. Code Ann. § 30-2-307 provides that creditor's claims shall be barred unless filed within the four month period. *See* Tenn. Code Ann. § 30-2-307(a)(1) (2002).

*Scaife*, 2003 Tenn. App. LEXIS 230, at \*\*8-10.

Pertinent statutes governing resolution of this appeal are Tenn. Code Ann. §§ 30-2-307(a)(1)(B) and § 30-2-310(a). Tenn. Code Ann. § 30-2-307(a)(1)(B) provides as follows:

**30-2-307. Claims against estate – Filing.** – (a)(1) All claims against the estate arising from a debt of the decedent shall be barred unless filed within the period prescribed in the notice published or posted in accordance with § 30-2-306(c). However:

\* \* \* \*

(B) If a creditor receives actual notice less than sixty (60) days before the date which is twelve (12) months from the decedent's date of death *or receives no notice*, such creditor's claim shall be barred unless filed within twelve (12) months from the decedent's date of death. (emphasis added).

Tenn. Code Ann. § 30-2-310(a) provides as follows:

**Limitation on time of filing claims.** – (a) All claims and demands not filed with the probate court clerk, as required by the provisions of §§ 30-2-306 – 30-2-309, or, if later, in which suit shall not have been brought or revived before the end of twelve (12) months from the date of death of the decedent, shall be forever barred.

Very recently, the Western Section of this Court released its opinion in *In re: Estate of Luck*, No. W2004-01554-COA-R3-CV, 2005 Tenn. App. LEXIS 332 (Tenn. Ct. App. June 7, 2005), *no appl. perm. appeal filed*. In *Luck*, the decedent died on January 1, 2002. The estate was opened over nineteen months later, on August 14, 2003. FDS/Goldsmith's filed a claim against the estate on October 17, 2003. *Luck*, 2005 Tenn. App. LEXIS 332 at \*\*2, 3. Relying on *Estate of Divinny v. Wheeler Bonding Co.*, No. M1999-00678-COA-R3-CV, 2000 Tenn. App. LEXIS 212 (Tenn. Ct. App. Mar. 31, 2000), *perm. app. denied Dec. 4, 2000*, the trial court concluded that the claim against the estate was timely because it was filed within the applicable four month period set forth in Tenn. Code Ann. § 30-2-306(c). The trial court reached this conclusion even though the claim had been filed more than twelve months after the decedent's death. *Id.* at \*\*3, 4.

On appeal, one of the issues before this Court was whether Tenn. Code Ann. §§ 30-2-307(a)(1)(B) and 30-2-310(a) "should be interpreted to mean that, if the creditor receives no notice of the death of the debtor, a claim is barred unless filed within twelve (12) months from the decedent's death ...." *Id.* at \*4. We concluded that the statutes should be so interpreted. As in the present case, the Court in *Luck* was, among other things, interpreting the Tenn. Code Ann. § 30-2-

307(a)(1)(B) exception to the four month period a creditor has to file a claim against an estate.<sup>1</sup> According to this Court in *Luck*:

While we recognize the probate court's duty to follow the precedents set forth by this Court ... our decision in *Estate of Divinny* and its progeny have misconstrued the statute of limitations applicable to a creditor's claim against an estate. The exception found in section 30-2-307(a)(1)(B) of the Tennessee Code expressly and unambiguously states that a "creditor's claim *shall be barred* unless filed within twelve (12) months from the decedent's date of death." See Tenn. Code Ann. § 30-2-307(a)(1) (2003) (emphasis added). Regarding section 30-2-307(a)(1)(B), our supreme court has stated:

Tenn. Code Ann. § 30-2-307(a)(1)(B) provides for an *absolute* one year limit on the filing of claims against the estate, and this limitations period applies whether the creditor has received proper notice or no notice at all. Thus, [the creditor's] claim was *required* to be filed within a year of [the decedent's] death.

*In re Estate of Jenkins v. Guyton*, 912 S.W.2d 134, 138 n.3 (Tenn. 1995); see also *Bowden v. Ward*, 27 S.W.3d 913, 918-19 (Tenn. 2000)....

Moreover, to construe section 30-2-307(a)(1)(B) of the Tennessee Code to mean that, when an estate is not opened for more than a year after the decedent's death, a creditor may still file a claim when the estate is eventually opened would make that statute repugnant to other parts of Title 30, Chapter 2, Part 3.... As we noted in *Brady*, the legislature amended section 30-2-306 of the Tennessee Code in 1999 by adding subsection (f) which provides that the personal representative of the estate is not required to provide the creditors of an estate with notice "if the letters testamentary or of administration are issued more than one (1) year from the decedent's date of death." Tenn. Code Ann. § 30-2-306(f) (2003); 1999 Tenn. Pub. Acts. ch. 491, § 5.... Furthermore, section 30-2-310(a) of the Tennessee Code provides:

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<sup>1</sup> Although notices to creditors were sent out on the same day the estate was opened, the record in *Luck* contained no evidence establishing when Goldsmith's received notice, if at all. Therefore, we proceeded as if Goldsmith's had not been provided any notice which, in turn, made applicable the exception contained in Tenn. Code Ann. § 30-2-307(a)(1)(B). *Luck*, 2005 Tenn. App. LEXIS 332, at \*11.

*All claims and demands not filed with the probate court clerk, as required by the provisions of §§ 30-2-306 – 30-2-309, or if later, in which suit shall not have been brought or revived before the end of twelve (12) months from the date of death of the decedent, shall be forever barred.*

Tenn. Code Ann. § 30-2-310(a) (2003) (emphasis added) .... If allowed to stand, our holding in *Estate of Divinny* and its progeny would render these provisions meaningless.

*Estate of Luck*, 2005 Tenn. App. LEXIS 332, at \*\*21-24 (footnotes omitted).<sup>2</sup> See also *In re: Estate of Key*, No. 03A01-9810-CH-00319, 1999 Tenn. App. LEXIS 201 (Tenn. Ct. App. Mar. 24, 1999), *no appl. perm. appeal filed*, (reaching essentially the same result as the Court in *Luck* although interpreting previous versions of the Tennessee Code).

We agree with the reasoning of the Court in *Luck*. Accordingly, Clabough, who was required to proceed as a creditor of the estate, had a maximum of one year from the date of the decedent's death in which to file her claim against the estate. Because she failed to do so, the Chancery Court correctly determined that her claim was time barred.

The next issue is Clabough's claim that Dalton is estopped from raising the statute of limitations defense. In her brief, Clabough states that when Dalton was appointed administratrix of the estate, she was aware of the existence of "two other potential heirs." Clabough then argues that because of this knowledge, Dalton was required by statute to provide Clabough with actual notice. Since Dalton failed to provide actual notice, Clabough insists this is equivalent to Dalton actively preventing Clabough from timely filing a claim. As we noted in *Scaife*:

In order to constitute an equitable estoppel, estoppel by conduct, or estoppel in pais there must exist a false representation or concealment of material facts; it must have been made with knowledge, actual or constructive, of the facts; the party to whom it was made must have been without knowledge or the means of knowledge of the real facts; it must have been made with the intention that it should be acted on; and the party to whom it was made must have relied on or acted on it to his prejudice.

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<sup>2</sup> In *Glanton v. Lord*, No. M2002-02363-COA-R3-CV, 2005 Tenn. App. LEXIS 96 (Tenn. Ct. App. Feb. 15, 2005), *appl. perm. appeal pending*, the Middle Section of this Court reached a different conclusion and held that the statute of limitations does not begin to run until "after a decedent's estate is submitted to probate and a statutory Notice to Creditors is published or posted." *Id.* at \* 25.

*Scaife*, 2003 Tenn. App. LEXIS 230, at \*\* 13-14 (quoting *Ryan v. Lumbermen's Mut. Cas. Co.*, 485 S.W.2d 548, 550 (Tenn. 1972)).<sup>3</sup> Returning to the facts, Clabough was provided notice by the Clerk and Master in November of 2002 that she needed to determine how to protect her interests. Clabough also was provided a copy of the Chancery Court's Order of Confirmation in January of 2003. Thereafter, she was provided notice by publication in February of 2003. All of this took place within one year of the decedent's death in April of 2002. Therefore, assuming for present purposes only that Dalton's failure to provide actual notice can amount to a concealment of material facts made with intent that it be acted upon, Clabough did not and cannot establish that she was without knowledge or the means of knowledge as to the real facts or that she justifiably relied on Dalton's inaction.

The final issue is Clabough's claim that she established that she was the daughter of the decedent and she consequently is entitled to a share of the estate. Our conclusion that Clabough's claim was untimely is not affected by whether she proved that she was the daughter of the decedent. The third issue is, therefore, moot.

### **Conclusion**

The judgment of the Chancery Court is affirmed, and this cause is remanded to the Chancery Court for collection of the costs below. Costs on appeal are assessed against the Appellant, Angela Clabough, and her surety.

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D. MICHAEL SWINEY, JUDGE

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<sup>3</sup> In *Scaife*, the notice to creditors was published in June and July of 2001. On July 31, 2001, the plaintiff was sent a copy of the letters of administration and a notice to creditor informing her that she had four months to make a claim against the estate. Plaintiff took no action until February of 2002, when she filed suit claiming to be the illegitimate daughter of the deceased. We affirmed the grant of summary judgment to the estate, stating the plaintiff "had four months from the date of the first publication or posting of the Notice to Creditors in which to establish paternity by clear and convincing proof." *Scaife*, 2003 Tenn. App. LEXIS 230, at \* 10. In *Glanton v. Lord*, 2005 Tenn. App. LEXIS 96 (Tenn. Ct. App. Feb. 15, 2005), the Court interpreted the foregoing portion of *Scaife* as requiring that a paternity claim be proven within four months. *Scaife* was not intended to hold that a paternity claim must be proven within the four months, but rather, our intent was to hold that the claim must be properly asserted against the estate within the four months. *Scaife*, which was authored by the undersigned, is hereby clarified to reflect the actual intent of the panel on that Opinion.